

JAN 18 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SALVADOR CHAVEZ-RIVERA,

Defendant - Appellant.

No. 07-50006

D.C. No. CR-04-00713-JTM

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Jeffrey T. Miller, District Judge, Presiding

Submitted January 14, 2008^{**}

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

Salvador Chavez-Rivera appeals from the 60-month sentence for illegal reentry in violation of 8 U.S.C. § 1326, imposed upon resentencing following

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

remand pursuant to *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Chavez-Rivera contends that failure to allege the date of removal in his indictment constituted structural error. This contention is foreclosed by *United States v. Salazar-Lopez*, 506 F.3d 748, 752-55 (9th Cir. 2007). We conclude that the error was harmless in light of overwhelming and uncontroverted evidence of removal subsequent to conviction. *See id.* at 755-56.

Chavez-Rivera's further contentions, that we should limit *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), to its facts under the doctrine of constitutional doubt, that *Almendarez-Torres* has been overruled, and that § 1326 is unconstitutional, are foreclosed. *See Salazar-Lopez*, 506 F.3d at 751 n.3.

We deny the government's request for judicial notice as moot.

AFFIRMED.